

REMARKS

Applicant would like to thank Examiner Katcheves for the Telephone interview held October 4, 2004. In the interview, independent Claim 1 was discussed with its recent amendments in view of U.S. Patent 3,946,569 to Stuber. Proposed claim language was discussed. The Examiner indicated that a subsequent search would be required but that the language did appear to make Claim 1 allowable over the art of record. Accordingly, Applicant is filing a Request for Continued Examination with this response.

Claims 1-20 are in the case. Claims 1-4, 12-14, and 16 were rejected under 35 U.S.C. 102(b) in view of U.S. Patent 3,946,569 to Stuber (hereinafter "Stuber"). Claims 5-10, 11, 15, 17, 19, and 20 were rejected under 35 U.S.C. 103(a) as being unpatentable in view of Stuber and U.S. Patent 6,399,544 to Fairchild et al. (hereinafter "Fairchild") and U.S. Patent 5,048,605 to Toon et al. (hereinafter "Toon").

Rejection of claims 1-20 under 35 U.S.C. § 102(b) and 103(a) as being unpatentable over Stuber in view of Fairchild and Toon

In light of the rejections, it may be instructive to review the claimed invention here. The claimed invention provides an environmentally friendly barrier for protecting objects such as poles. The barrier includes an organic bentonite-based material and an outer boundary surface. In addition, a top surface of the material remains uncovered or exposed to the air. Applicant has amended Claims 1, 13, and 20 to clarify that "~~a substantial portion~~top surface of the material remains uncovered and exposed to the aboveground environment after disposing the bentonite-based material within the outer boundary." The aboveground environment is all the area above ground level surrounding the object.

Support for this amendment is found in the specification in paragraph 12 where reference is made to a upward slope of the material towards the object. Further support is found in paragraph 30

of the specification. Figures 4 and 5 of the specification also supports this amendment as the surface 302 does not extend over the top of the material 104, behind barrier 106. Because the material remains exposed and uncovered, the material provides a structure for protecting against environmental damage such as insects, foliage, water, and fire.

Stuber discloses a method and means for installing a post. Stuber includes a post having a plurality of bracelet members and a swelling agent (bentonite). Unlike the claimed invention, Stuber provides that the bentonite is to be used entirely inside the hole for installation purposes. Stuber fails to teach, disclose, or suggest that the material remain exposed or uncovered. Applicant asserts that such teaching is absent from Stuber because the purpose of Stuber is installation not protection of a pole or object from environmental affects. The purpose of the material in Stuber is fundamentally different from the purpose of the present invention.

Figures 5-8, in particular Figure 6, explicitly shows that the swelling agent is meant to reside below ground to facilitate installation, not preservation. Therefore, Stuber does not teach or disclose bentonite material that remains exposed to the aboveground environment.

Furthermore, Stuber teaches against the amendment to Claims 1, 13, and 20 that the material remain exposed. Stuber specifically teaches that the material is constantly covered in a casing. “[P]ost 10 is wrapped in a 1 to 6 inch burlap, or similar, covering 20 having a swelling agent compound encased therein...” *See* Stuber col. 2, lines 50-53. In addition, Stuber makes a point to identify the coverings as perforate or imperforate. *See* Stuber col. 2, lines 47-48. The coverings may dissolve or be burst. *See* Stuber col. 2, line 65 – col. 3, line 2.

Figures 5 and 6 clearly teach two phases in the installation process. It should be noted that in Figure 5 no terrane 18 covers the hole. The material 12 is not exposed to the aboveground environment however due to the casing 20, illustrated in Figure 3. In Figure 6, terrane 18 does cover the hole and prevents any exposure with the aboveground environment. Arguably, if the covering 20 for the rings 12 is burst, the material inside the covering 20 may be exposed in the subterranean

spaces illustrated in Figure 6. However, such exposure is still not exposure to the aboveground environment which is all the air surrounding the pole and above the terrain 18. Therefore, while exposure of material may arguably be found in Stuber, such exposure is not to the same extent as recited in amended Claim 1, “...~~a substantial portion~~top surface of the material remains uncovered and exposed to the aboveground environment after disposing the bentonite-based material within the outer boundary.”

Applicant asserts that the invention of Stuber is limited to subterranean installation/exposure and would not preserve the post from environmental damage from fire, foliage growth, and insects. In contrast, keeping a top surface of the material exposed to the above ground environment, as in the present invention, prevents encroachment of environmental hazards. In particular, the exposed material provides a barrier that is hostile to seeds, seedlings, and roots that contact the bentonite-based material. This prevents any vegetation growth in the material and consequently around the pole.

Applicant has amended claims 1, 13, and 20 to clarify that a top surface of the bentonite-material is uncovered, exposed, and remains so disposed above ground level for preservation purposes. Therefore, due to this substantial structural difference, applicants respectfully submit that the amended claims 1-20 are patentable over Stuber.

The Examiner's arguments mentioned in the Office Action rely principally on Stuber. Since Stuber fails to teach or disclose all the elements of the claimed invention, as discussed above, Applicant asserts that claims rejected based on Stuber, Toon, and Fairchild also fail to teach all the elements of the claimed invention for at least the same reasons. Thus, Applicants respectfully submit that claims 1-20 are patentable over Stuber, Toon, and Fairchild.

In summary, Applicant wishes to point out features of the claimed invention that distinguish over the cited references. Specifically, Applicant asserts that the following claimed features are not disclosed in the cited references:

- A barrier having “a ~~substantial portion~~top surface of the material remains uncovered and exposed to the aboveground environment after disposing the bentonite-based material within the outer boundary,” as cited in independent Claims 1. Claim 20 recites substantially the same subject matter.
- An organic bentonite-based material in which “a ~~substantial portion~~top surface of the bentonite-based material remaining exposed to the aboveground environment; after disposing the bentonite-based material within the outer boundary surface,” as cited in independent claim 13.

Applicants have made these amendments to clarify that the organic material remains uncovered and exposed above ground level to afford environmental protection. Therefore, Applicants respectfully assert that claims 1-20 are in condition for immediate allowance.

For the reasons stated above, particularly in light of the clarifying amendments, Applicants assert that claims 1-20 are in condition for allowance and respectfully requests prompt allowance of the pending claims. In the event that the Examiner finds any remaining impediments to the prompt allowance of any of these claims which could be clarified in a telephone conference, the Examiner is respectfully urged to initiate the same with the undersigned.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "David J. McKenzie", is written over a horizontal line.

David J. McKenzie

Reg. No. 46,919

Attorney for Applicants

Date: November 9, 2004

Kunzler and Associates
Suite 600
8 East Broadway
Salt Lake City, UT 84111
Telephone: (801) 994-4646
FAX: (801) 531-1929